

**PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

1  
2 Name GONZALES ANTHONY D.  
3 (Last) (First) (Initial)  
4 Prisoner Number ~~V-50565~~ V97347  
5 Institutional Address P.O. BOX 4000, VACAVILLE, CA 95696

6  
7 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

8 ANTHONY DANIEL GONZALES

9 (Enter the full name of plaintiff in this action.)

10 vs.

11 JAMES E. TILTON, SECRETARY,

12 CALIFORNIA DEPARTMENT OF CORRECTIONS

13  
14 (Enter the full name of respondent(s) or jailor in this action)

Case No. 3378  
(To be provided by the clerk of court)

**PETITION FOR A WRIT**  
**OF HABEAS CORPUS**

15  
16 Read Comments Carefully Before Filling In

17 When and Where to File

18 You should file in the Northern District if you were convicted and sentenced in one of these  
19 counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa,  
20 San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in  
21 this district if you are challenging the manner in which your sentence is being executed, such as loss of  
22 good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

23 If you are challenging your conviction or sentence and you were not convicted and sentenced in  
24 one of the above-named fifteen counties, your petition will likely be transferred to the United States  
25 District Court for the district in which the state court that convicted and sentenced you is located. If  
26 you are challenging the execution of your sentence and you are not in prison in one of these counties,  
27 your petition will likely be transferred to the district court for the district that includes the institution  
28 where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

Santa Clara County Superior Court

San Jose

Court

Location

(b) Case number, if known H031002

(c) Date and terms of sentence 9/9/05; 16 years to life

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes ☒ No ☐

Where?

Name of Institution: California State Prison - Solano

Address: P.O. Box 4000, Vacaville, CA 95696

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

One count of violation of Cal. Penal Code section 187, subdivision (a) - Murder, second degree

plus enhancement for personal use of deadly and dangerous weapon within the meaning of

Cal. Penal Code section 12022, subdivision (b)(1)

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐

Preliminary Hearing: Yes ☒ No ☐

Motion to Suppress: Yes ☐ No ☒

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) \_\_\_\_\_

5. If you went to trial, what kind of trial did you have?

Jury ☒ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial? Yes ☒ No ☐

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes ☒ No ☐

(b) Preliminary hearing Yes ☒ No ☐

(c) Time of plea Yes ☒ No ☐

(d) Trial Yes ☒ No ☐

(e) Sentencing Yes ☒ No ☐

(f) Appeal Yes ☒ No ☐

(g) Other post-conviction proceeding Yes ☒ No ☐

8. Did you appeal your conviction? Yes ☒ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes ☒ No ☐

Year: 2006 Result: Affirmed

Supreme Court of California Yes ☒ No ☐

Year: 2007 Result: Review denied

Any other court Yes ☐ No ☒

Year: \_\_\_\_\_ Result: \_\_\_\_\_

(b) If you appealed, were the grounds the same as those that you are raising in this

petition?

Yes \_\_\_\_\_ No ☒

(c) Was there an opinion?

Yes ☒ No \_\_\_\_\_

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes \_\_\_\_\_ No ☒

If you did, give the name of the court and the result:

\_\_\_\_\_  
\_\_\_\_\_

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ☒ No \_\_\_\_\_

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: California Court of Appeal, Sixth Appellate District

Type of Proceeding: Petition for Writ of Habeas Corpus

Grounds raised (Be brief but specific):

a. Ineffective Assistance of Counsel- Failure to Consult Expert

b. Ineffective Assistance of Counsel - Failed to Object to Exhibit Packaging

c. Ineffective Assistance of Counsel - Fail to Object Prosecutor Misconduct

d. \_\_\_\_\_

Result: Denied Date of Result: 5/23/07

II. Name of Court: \_\_\_\_\_

Type of Proceeding: \_\_\_\_\_

Grounds raised (Be brief but specific):

1 a. \_\_\_\_\_  
 2 b. \_\_\_\_\_  
 3 c. \_\_\_\_\_  
 4 d. \_\_\_\_\_  
 5 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

6 III. Name of Court: \_\_\_\_\_  
 7 Type of Proceeding: \_\_\_\_\_  
 8 Grounds raised (Be brief but specific):  
 9 a. \_\_\_\_\_  
 10 b. \_\_\_\_\_  
 11 c. \_\_\_\_\_  
 12 d. \_\_\_\_\_  
 13 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

14 IV. Name of Court: \_\_\_\_\_  
 15 Type of Proceeding: \_\_\_\_\_  
 16 Grounds raised (Be brief but specific):  
 17 a. \_\_\_\_\_  
 18 b. \_\_\_\_\_  
 19 c. \_\_\_\_\_  
 20 d. \_\_\_\_\_  
 21 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?  
 23 Yes \_\_\_\_\_ No ☒

24 Name and location of court: \_\_\_\_\_

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to  
 27 support each claim. For example, what legal right or privilege were you denied? What happened?  
 28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Trial counsel provided ineffective assistance by failing to consult and call to testify  
6 expert on knives or provide support for claim petitioner opened knife with one hand

7 Supporting Facts: Petitioner claimed decedent and others attacked him & piled on top of him,  
8 endangering his life. Removing folding knife from his pocket, he opened it with one hand,  
9 using stud on knife, then stabbed decedent in self-defense. Prosecutor argued impossible to  
10 open knife as claimed. Expert would have disputed this claim based on knife's design feature.

11 Claim Two: Trial counsel provided ineffective assistance by failing to object to court ruling  
12 knife could only go into jury room in pressurized packaging which prevented handling

13 Supporting Facts: Counsel wanted jurors to be able to handle and test knife to determine  
14 it could be opened in manner petitioner claimed, She asked court to allow knife into jury room  
15 but then failed to object to ruling and explain that packaging would impede effective testing.  
16 In fact, jurors could not manipulate knife through packaging so as to test it as needed.

17 Claim Three: Trial counsel provided ineffective assistance by failing to object to improper  
18 argument amounting to prosecutorial misconduct.

19 Supporting Facts: Prosecutor argued facts outside the evidence by claiming it was impossible  
20 to open the knife with one hand as petitioner claimed. No one had so testified, but prosecutor  
21 insisted this impossibility meant petitioner was lying. Counsel neither objected to this  
22 argument nor effectively addressed the contention in her closing argument.

23 If any of these grounds was not previously presented to any other court, state briefly which  
24 grounds were not presented and why:

25 Not applicable  
26  
27  
28

1 List, by name and citation only, any cases that you think are close factually to yours so that they  
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning  
3 of these cases:

4 Caro v. Calderon, 165 F.3d 1223 (9th Cir. 1998)

5 Strickland v. Washington 466 U.S. 668 (1984)

6 Sanders v. Ratelle 21 F.3d 1446 (9th Cir. 1994)

7 Do you have an attorney for this petition?

Yes ☒

No ☐

8 If you do, give the name and address of your attorney:

9 Steven Schorr, P.O. Box 910496, San Diego, CA 92191-0496

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in  
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12  
13 Executed on 5-12-08

14 Date

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Signature of Petitioner

(Rev. 6/02)

### PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is P.O. Box 910496, San Diego, California 92191. On the date shown below, I served the within PETITION FOR WRIT OF HABEAS CORPUS to the following parties hereinafter named by:

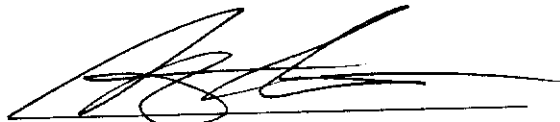
X Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Clara, California, addressed as follows:

Attorney General's Office  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Attn: Jeffrey M. Laurence, DDA  
[Counsel for Respondent]

James E. Tilton, Secretary  
California Department of Corrections  
1515 "S" Street  
Sacramento, CA 95814

Anthony Daniel Gonzales  
#V-97347  
California State Prison - Solano  
P.O. Box 4000  
Vacaville, CA 95696

I declare under penalty of perjury the foregoing is true and correct. Executed this 11th day of July, 2008, at San Diego, California.



Steven Schorr